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FSB, f/k/a and sued as "World Savings Bank,  
FSB"

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DOLORES MANDRIGUES, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

WORLD SAVINGS, INC., WORLD SAVINGS  
BANK, FSB, WACHOVIA MORTGAGE  
CORPORATION, and DOES 1 through 10,  
inclusive,

Defendants.

Case No. C07 04497

**ANSWER OF DEFENDANT WACHOVIA  
MORTGAGE, FSB (FORMERLY KNOWN  
AS, AND SUED AS, "WORLD SAVINGS  
BANK, FSB") TO PLAINTIFFS'  
CORRECTED SECOND AMENDED  
COMPLAINT**

Corrected Second Amended Complaint  
Filed: December 31, 2007

Honorable Jeremy Fogel

Defendant Wachovia Mortgage, FSB, sued herein under its former name of "World Savings Bank, FSB" ("Defendant"), answers the Corrected Second Amended Complaint for Violations of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq*; Fraudulent Omissions; Violations of the Bus. & Prof. Code § 17200, *et seq*. – "Unfair" and "Fraudulent" Business Practices; Breach of Contract; and Breach of Covenant of Good Faith and Fair Dealings ("CSAC") filed by Plaintiffs Dolores Mandrigues, Juanita Jones, Al F. Minyen and Wilma R. Minyen, Mark Clauson and Christina Clauson ("collectively, Plaintiffs") as follows:

To the extent the titles and headings inserted by Plaintiffs at various points in the CSAC are intended to make or infer claims or allegations against Defendant, they are denied.

## NATURE OF THE CASE

**PARTIES**

2. Answering Paragraph 2 of the CSAC, Defendant admits only that on or about August 4, 2006, Plaintiff Dolores Mandrigues (“Mandrigues”) refinanced her home and entered into a financing agreement with Defendant, that Exhibit 1 is a copy of the form of promissory note that Mandrigues executed and that Exhibit 1 is a copy of the form of Truth in Lending Act Disclosure Statement (“TILDS”) that Mandrigues executed, but denies that Exhibit 1 includes the final executed copy of either the note or the TILDS. Defendant can neither admit nor deny the remaining allegations of Paragraph 2 because it lacks sufficient knowledge and information on

1 which to base a responsive pleading as to where Mandrigues presently maintains her primary  
2 residence.

3  
4 3. Answering Paragraph 3 of the CSAC, Defendant admits only that on or about  
5 January 7, 2006, Plaintiff Juanita Jones ("Jones") refinanced her home and entered into a financing  
6 agreement with Defendant, that Exhibit 1 contains a copy of the form of promissory note that Jones  
7 executed and that Exhibit 1 contains a copy of the form of TILDS that Jones executed, but denies  
8 that Exhibit 2 includes the final executed copy of either the note or the TILDS. Defendant can  
9 neither admit nor deny the remaining allegations of Paragraph 3 because it lacks sufficient  
10 knowledge and information on which to base a responsive pleading as to where Jones presently  
11 maintains her primary residence.

12  
13 4. Answering Paragraph 4 of the CSAC, Defendant admits only that Plaintiffs Al F. and  
14 Wilma Minyen ("the Minyens") entered into a financing agreement with Defendant, alleges that  
15 Exhibit 3 contains a copy of the promissory note, the TILDS and the "Loan Program Disclosure"  
16 that the Minyens executed, but denies that a "Mildred R. Minyen" obtained financing from  
17 Defendant. Defendant can neither admit nor deny the remaining allegations of Paragraph 4 because  
18 it lacks sufficient knowledge and information on which to base a responsive pleading as to where  
19 the Minyens presently maintain their primary residence.

20  
21 5. Answering Paragraph 5 of the CSAC, Defendant admits only that on or about June  
22 24, 2005, Plaintiffs Mark Clauson and Christina Clauson ("the Clausons") entered into a financing  
23 agreement with Defendant and that Exhibit 4 contains a copy of the form of promissory note that the  
24 Clausons executed, alleges that Exhibit 4 also contains a TILDS that Mark Clauson executed and  
25 which is identical to a TILDS that Christina Clauson executed, but denies that Exhibit 4 includes the  
26 final executed copy of the Clausons' promissory note. Defendant can neither admit nor deny the  
27 remaining allegations of Paragraph 5 because it lacks sufficient knowledge and information on  
28

1 which to base a responsive pleading as to where the Clausons presently maintain their primary  
2 residence

3  
4 6. Answering Paragraph 6 of the CSAC, Defendant denies the existence of any class.

5  
6 7. Answering Paragraph 7 of the CSAC, Defendant admits that World Savings, Inc. is a  
7 California corporation and denies the remaining allegations.

8  
9 8. Answering Paragraph 8 of the CSAC, Defendant denies the allegations.

10  
11 9. Answering Paragraph 9 of the CSAC, Defendant admits that Wachovia Mortgage  
12 Corporation is a North Carolina corporation and denies the remaining allegations.

13  
14 10. Answering Paragraph 10 of the CSAC, Defendant neither admits nor denies the  
15 allegations because they lack knowledge and information on which to base a responsive pleading.

16  
17 11. Answering Paragraph 11 of the CSAC, Defendant admits that it has marketed and  
18 sold adjustable rate mortgages with a payment option feature in various parts of the United States,  
19 including Santa Clara County, California, but denies the remaining allegations.

20  
21 12. Answering Paragraph 12 of the CSAC, Defendant denies the allegations and denies  
22 that Plaintiffs and/or the putative class members were injured in any way or at all.

23  
24 13. Answering Paragraph 13 of the CSAC, Defendant denies the allegations.

25  
26 14. Answering Paragraph 14 of the CSAC, Defendant denies the allegations.

1           15. Answering Paragraph 15 of the CSAC, Defendant admits that it has conducted  
2 business in California, and denies the remaining allegations.

3  
4           16. Answering Paragraph 16 of the CSAC, Defendant lacks knowledge or information  
5 sufficient to form a belief as to the truth or falsity of the allegations against the co-defendants and,  
6 on that ground, denies them.

7  
8           17. Answering Paragraph 17 of the CSAC, Defendant lacks knowledge or information  
9 sufficient to form a belief as to the truth or falsity of the allegations against the co-defendants and,  
10 on that ground, denies them.

11  
12           18. Answering Paragraph 18 of the CSAC, Defendant denies the allegations.

13  
14                           **JURISDICTIONAL ALLEGATIONS**

15  
16           19. Answering Paragraph 19 of the CSAC, Defendant admits only that Plaintiffs purport  
17 to invoke the jurisdiction of the Court. Defendant denies any substantive claims implied by the  
18 allegations of Paragraph 19 of the CSAC.

19  
20           20. Answering Paragraph 20 of the CSAC, Defendant admits only that Plaintiffs purport  
21 to invoke the jurisdiction of the Court. Defendant denies any substantive claims implied by the  
22 allegations of Paragraph 20 of the CSAC.

23  
24           21. Answering Paragraph 21 of the CSAC, Defendant admits only that Plaintiffs purport  
25 to lay proper venue for this suit with the Court. Defendant denies any substantive claims implied by  
26 the remaining allegations of Paragraph 21 of the CSAC.

**GENERAL ALLEGATIONS**

22. Answering Paragraph 22 of the CSAC, Defendant denies the allegations.

23. Answering Paragraph 23 of the CSAC, Defendant denies the allegations and further denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

24. Answering Paragraph 24 of the CSAC, Defendant denies the allegations and further denies that it engaged in any improper conduct towards Plaintiffs and/or any member of the putative class.

25. Answering Paragraph 25 of the CSAC, Defendant admits only that it offers a variable rate home loan product with payment change protection provisions and that Plaintiffs each obtained such a loan from Defendant, but denies the remaining allegations and further denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

26. Answering Paragraph 26 of the CSAC, to the extent it states conclusions of law, no response is required. Defendant denies all remaining factual allegations of Paragraph 26 of the CSAC, and further denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

27. Answering Paragraph 27 of the CSAC, Defendant denies the allegations.

28. Answering Paragraph 28 of the CSAC, Defendant admits only that Plaintiffs each applied for and obtained one or more loans from Defendant and that one feature of the loans obtained was the flexibility to choose to make payments at certain levels at certain times, but denies the remaining allegations and further denies that it made any misrepresentations to Plaintiffs and/or any member of the putative class.



1           29. Answering Paragraph 29 of the CSAC, Defendant alleges that the various sets of loan  
2 contract documents and disclosures, including the TILDS, provided to each Plaintiff and members  
3 of the putative class each speak for themselves, and Defendant denies the allegations of Paragraph  
4 29 of the CSAC.

5  
6           30. Answering Paragraph 30 of the CSAC, Defendant denies the allegations.

7  
8           31. Answering Paragraph 31 of the CSAC, Defendant denies the allegations.

9  
10          32. Answering Paragraph 32 of the CSAC, Defendant denies the allegations.

11  
12          33. Answering Paragraph 33 of the CSAC, Defendant denies the allegations.

13  
14          34. Answering Paragraph 34 of the CSAC, Defendant denies the allegations and further  
15 denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

16  
17          35. Answering Paragraph 35 of the CSAC, Defendant alleges that the various sets of  
18 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
19 members of the putative class each speak for themselves, and Defendant denies the allegations of  
20 Paragraph 35 of the CSAC and further denies that it failed to disclose any information to Plaintiffs  
21 and/or any member of the putative class.

22  
23          36. Answering Paragraph 36 of the CSAC, Defendant denies the allegations.

24  
25          37. Answering Paragraph 37 of the CSAC, Defendant alleges that the various sets of  
26 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
27 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
28

1 of Paragraph 35 of the CSAC, including each of its subparts, and further denies that Defendant  
2 misled Plaintiffs and/or any member of the putative class.

3  
4 38. Answering Paragraph 38 of the CSAC, Defendant denies the allegations and further  
5 denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

6  
7 39. Answering Paragraph 39 of the CSAC, Defendant denies the allegations and further  
8 denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

9  
10 40. Answering Paragraph 40 of the CSAC, Defendant denies the allegations and further  
11 denies that it failed to disclose any information, including information consumers might wish to  
12 know about the existence, effect or possibility of negative amortization, or about any other matter,  
13 to Plaintiffs and/or any member of the putative class.

14  
15 41. Answering Paragraph 41 of the CSAC, Defendant alleges that the various sets of  
16 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
17 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
18 of Paragraph 41 of the CSAC and further denies that it failed to disclose any information, including  
19 information consumers might wish to know about the existence, effect or possibility of negative  
20 amortization, or about any other matter, to Plaintiffs and/or any member of the putative class.

21  
22 42. Answering Paragraph 42 of the CSAC, Defendant alleges that the various sets of  
23 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
24 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
25 of Paragraph 42 of the CSAC and further denies that it failed to disclose any information, including  
26 information consumers might wish to know about the existence, effect or possibility of negative  
27 amortization, or about any other matter, to Plaintiffs and/or any member of the putative class.

28

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1           43. Answering Paragraph 43 of the CSAC, Defendant denies the allegations.

2  
3           44. Answering Paragraph 44 of the CSAC, Defendant denies the allegations and further  
4 denies that it failed to disclose any information, including information consumers might wish to  
5 know about the existence, effect or possibility of negative amortization, or about any other matter,  
6 to Plaintiffs and/or any member of the putative class.

7  
8           45. Answering Paragraph 45 of the CSAC, Defendant denies the allegations and further  
9 denies that it failed to disclose any information, including information consumers might wish to  
10 know about the existence, effect or possibility of negative amortization, or about any other matter,  
11 to Plaintiffs and/or any member of the putative class.

12  
13           46. Answering Paragraph 46 of the CSAC, Defendant denies the allegations and denies  
14 that Plaintiffs were injured in any way or at all.

15  
16           47. Answering Paragraph 47 of the CSAC, Defendant denies the allegations and further  
17 denies that it misled or deceived Plaintiffs and/or any member of the putative class in any way or at  
18 all.

19  
20           48. Answering Paragraph 48 of the CSAC, Defendant denies the allegations and denies  
21 that Plaintiffs were injured in any way or at all.

22  
23           49. Answering Paragraph 49 of the CSAC, Defendant denies the allegations and further  
24 denies that it misled or deceived Plaintiffs and/or any member of the putative class in any way or at  
25 all.

1           50. Answering Paragraph 50 of the CSAC, Defendant denies the allegations and further  
2 denies that it misled or deceived Plaintiffs and/or any member of the putative class in any way or at  
3 all.

4  
5           51. Answering Paragraph 51 of the CSAC, Defendant denies the allegations and further  
6 denies that it misled or deceived Plaintiffs and/or any member of the putative class in any way or at  
7 all.

8  
9           52. Answering Paragraph 52 of the CSAC, Defendant admits only that it has and sold  
10 adjustable rate mortgages with a payment option feature in various parts of the United States,  
11 including California, and denies the remaining allegations and further denies that it misled or  
12 deceived Plaintiffs and/or any member of the putative class in any way or at all.

13  
14                                   **CLASS ACTION ALLEGATIONS**

15  
16           53. Answering Paragraph 53 of the CSAC, to the extent it states conclusions of law, no  
17 response is required. Defendant denies all remaining substantive factual allegations of Paragraph 53  
18 of the CSAC and further denies the existence of any class.

19  
20           54. Answering Paragraph 54 of the CSAC, Defendant denies the allegations and further.  
21 denies the existence of any class.

22  
23           55. Answering Paragraph 55 of the CSAC, Defendant denies the allegations of Paragraph  
24 55 of the CSAC, including subparagraphs (1) – (18), and further denies the existence of any class.

25  
26           56. Answering Paragraph 56 of the CSAC, Defendant denies the allegations, denies the  
27 existence of any class and further denies that it engaged in any unlawful conduct.  
28

1           57. Answering Paragraph 57 of the CSAC, Defendant denies the allegations and further  
2 denies the existence of any class.

3  
4           58. Answering Paragraph 58 of the CSAC, Defendant denies the allegations.

5  
6           59. Answering Paragraph 59 of the CSAC, to the extent it states conclusions of law, no  
7 response is required. Defendant denies all remaining allegations of Paragraph 59 of the CSAC:

8  
9                                   **FIRST CAUSE OF ACTION**

10           60. Answering Paragraph 60 of the CSAC, Defendant re-alleges and reasserts its  
11 foregoing responses to Paragraphs 1 through 59.

12  
13           61. Answering Paragraph 61 of the CSAC, Defendant alleges that the statute, regulations  
14 and Federal Reserve Board's Official Staff Commentary ("Commentary") cited each speak for  
15 themselves. Defendant denies any remaining substantive factual allegations of Paragraph 61 of the  
16 CSAC.

17  
18           62. Answering Paragraph 62 of the CSAC, Defendant alleges that the regulation cited  
19 speaks for itself. Defendant denies any remaining substantive factual allegations of Paragraph 62 of  
20 the CSAC.

21  
22           63. Answering Paragraph 63 of the CSAC, Defendant alleges that the regulation cited  
23 speaks for itself. Defendant denies any remaining substantive factual allegations of Paragraph 63 of  
24 the CSAC.

25  
26           64. Answering Paragraph 64 of the CSAC, Defendant alleges that the statute cited speaks  
27 for itself. Defendant denies any remaining substantive factual allegations of Paragraph 64 of the  
28 CSAC.

1           65. Answering Paragraph 65 of the CSAC, Defendant denies the allegations, denies that it  
2 failed to disclose any information to Plaintiffs and/or any member of the putative class and further  
3 denies that its loan documents or disclosures violated TILA in any way or at all.

4  
5           66. Answering Paragraph 66 of the CSAC, Defendant denies the allegations and further  
6 denies that it violated TILA in any way or at all.

7  
8           67. Answering Paragraph 67 of the CSAC, Defendant alleges that the TILA statute  
9 speaks for itself. Defendant denies any remaining substantive factual allegations of Paragraph 67 of  
10 the CSAC.

11  
12           68. Answering Paragraph 68 of the CSAC, Defendant alleges that the TILA statute  
13 speaks for itself. Defendant denies any remaining substantive factual allegations of Paragraph 68 of  
14 the CSAC, denies that it failed to disclose any information to Plaintiffs and/or any member of the  
15 putative class and further denies that its loan documents or disclosures violated TILA in any way or  
16 at all.

17  
18           69. Answering Paragraph 69 of the CSAC, Defendant alleges that the various sets of  
19 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
20 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
21 of Paragraph 69 of the CSAC and further denies that it failed to disclose any information to  
22 Plaintiffs and/or any member of the putative class and further denies that its loan documents or  
23 disclosures violated TILA in any way or at all.

24  
25           70. Answering Paragraph 70 of the CSAC, Defendant alleges that the various sets of  
26 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
27 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
28

1 of Paragraph 70 of the CSAC and further denies that it failed to disclose any information to  
2 Plaintiffs and/or any member of the putative class.

3  
4 71. Answering Paragraph 71 of the CSAC, Defendant alleges that the various sets of  
5 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
6 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
7 of Paragraph 71 of the CSAC and further denies that it failed to disclose any information to  
8 Plaintiffs and/or any member of the putative class.

9  
10 72. Answering Paragraph 72 of the CSAC, Defendant alleges that the various sets of  
11 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
12 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
13 of Paragraph 72 of the CSAC and further denies that it failed to disclose any information to  
14 Plaintiffs and/or any member of the putative class.

15  
16 73. Answering Paragraph 73 of the CSAC, Defendant alleges that the various sets of  
17 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
18 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
19 of Paragraph 73 of the CSAC and further denies that it misled Plaintiffs and/or any member of the  
20 putative class.

21  
22 74. Answering Paragraph 74 of the CSAC, Defendant alleges that the various sets of  
23 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
24 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
25 of Paragraph 74 of the CSAC and further denies that it misled Plaintiffs and/or any member of the  
26 putative class.

1           75. Answering Paragraph 75 of the CSAC, Defendant alleges that the various sets of  
2 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
3 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
4 of Paragraph 75 of the CSAC and further denies that it misled Plaintiffs and/or any member of the  
5 putative class.

6  
7           76. Answering Paragraph 76 of the CSAC, Defendant alleges that the various sets of  
8 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
9 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
10 of Paragraph 76 of the CSAC and further denies that its TILDS are deceptive in any manner or at  
11 all.

12  
13           77. Answering Paragraph 77 of the CSAC, Defendant alleges that the various sets of  
14 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
15 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
16 of Paragraph 77 of the CSAC and further denies that it failed to disclose any information to  
17 Plaintiffs and/or any member of the putative class.

18  
19           78. Answering Paragraph 78 of the CSAC, Defendant alleges that the regulation cited  
20 speaks for itself. Defendant denies any remaining substantive factual allegations of Paragraph 78 of  
21 the CSAC.

22  
23           79. Answering Paragraph 79 of the CSAC, Defendant alleges that TILA and its  
24 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
25 Defendant denies any remaining implied substantive factual allegations of Paragraph 79 of the  
26 CSAC.



1           80. Answering Paragraph 80 of the CSAC, Defendant alleges that TILA and its  
2 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
3 Defendant denies any remaining implied substantive factual allegations of Paragraph 80 of the  
4 CSAC.

5  
6           81. Answering Paragraph 81 of the CSAC, Defendant alleges that TILA and its  
7 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
8 Defendant denies any remaining implied substantive factual allegations of Paragraph 81 of the  
9 CSAC.

10  
11           82. Answering Paragraph 82 of the CSAC, Defendant admits only that it sold adjustable  
12 rate mortgages with a payment change protection feature in various parts of the United States,  
13 alleges that the various sets of contract documents and disclosures, including the TILDS, provided  
14 to each Plaintiff and/or the members of the putative class each speak for themselves, and denies the  
15 allegations of Paragraph 77 of the CSAC and further denies that it failed to disclose any information  
16 to Plaintiffs and/or any member of the putative class.

17  
18           83. Answering Paragraph 83 of the CSAC, Defendant alleges that the various sets of  
19 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
20 members of the putative class each speak for themselves, denies the allegations of Paragraph 83 of  
21 the CSAC and further denies that it failed to disclose any information to Plaintiffs and/or any  
22 member of the putative class.

23  
24           84. Answering Paragraph 84 of the CSAC, Defendant alleges that the various sets of  
25 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
26 members of the putative class each speak for themselves, denies the allegations of Paragraph 84 of  
27 the CSAC and further denies that it failed to disclose any information to Plaintiffs and/or any  
28 member of the putative class.

1           85. Answering Paragraph 85 of the CSAC, Defendant alleges that the various sets of  
2 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
3 members of the putative class each speak for themselves, denies the allegations of Paragraph 85 of  
4 the CSAC and further denies that it failed to disclose any information to Plaintiffs and/or any  
5 member of the putative class.

6  
7           86. Answering Paragraph 86 of the CSAC, Defendant alleges that TILA and its  
8 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
9 Defendant denies any remaining implied substantive factual allegations of Paragraph 86 of the  
10 CSAC.

11  
12           87. Answering Paragraph 87 of the CSAC, Defendant alleges that TILA and its  
13 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
14 Defendant denies any remaining implied substantive factual allegations of Paragraph 87 of the  
15 CSAC.

16  
17           88. Answering Paragraph 88 of the CSAC, Defendant alleges that the various sets of  
18 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
19 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
20 of Paragraph 69 of the CSAC and further denies that it failed to disclose any information to  
21 Plaintiffs and/or any member of the putative class and further denies that its loan documents or  
22 disclosures violated TILA in any way or at all.

23  
24           89. Answering Paragraph 89 of the CSAC, Defendant alleges that TILA and its  
25 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
26 Defendant denies any remaining implied substantive factual allegations of Paragraph 89 of the  
27 CSAC.

1           90. Answering Paragraph 90 of the CSAC, Defendant alleges that TILA and its  
2 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
3 Defendant denies any remaining implied substantive factual allegations of Paragraph 90 of the  
4 CSAC.

5  
6           91. Answering Paragraph 91 of the CSAC, Defendant alleges that TILA and its  
7 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
8 Defendant denies any remaining implied substantive factual allegations of Paragraph 91 of the  
9 CSAC.

10  
11           92. Answering Paragraph 92 of the CSAC, Defendant alleges that TILA and its  
12 implementing regulations speak for themselves, and alleges that Plaintiffs interpret them incorrectly.  
13 Defendant denies any remaining implied substantive factual allegations of Paragraph 92 of the  
14 CSAC.

15  
16           93. Answering Paragraph 93 of the CSAC, Defendant alleges that the various sets of  
17 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
18 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
19 of Paragraph 92 of the CSAC and further denies that it failed to disclose any information to  
20 Plaintiffs and/or any member of the putative class and further denies that its loan documents or  
21 disclosures violated TILA in any way or at all.

22  
23           94. Answering Paragraph 94 of the CSAC, Defendant alleges that the various sets of  
24 contract documents and disclosures, including the TILDS, provided to each Plaintiff and/or the  
25 members of the putative class each speak for themselves, and Defendant thus denies the allegations  
26 of Paragraph 94 of the CSAC and further denies that it failed to disclose any information to  
27 Plaintiffs and/or any member of the putative class.

1           95. Answering Paragraph 95 of the CSAC, Defendant admits that it has sold some  
2 adjustable rate mortgages with a payment change protection feature, alleges that the payment  
3 change limitation most often was a maximum 7.5% rise annually for a set period, subject to certain  
4 exceptions, and denies all remaining allegations of Paragraph 95 of the CSAC.

5  
6           96. Answering Paragraph 96 of the CSAC, Defendant alleges that TILA and its  
7 implementing regulations speak for themselves, alleges that Plaintiffs interpret them incorrectly and  
8 thus denies all remaining allegations of Paragraph 96 of the CSAC.

9  
10          97. Answering Paragraph 97 of the CSAC, Defendant denies the allegations and further  
11 denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

12  
13          98. Answering Paragraph 98 of the CSAC, Defendant denies the allegations and further  
14 denies that it failed to disclose any information to Plaintiffs and/or any member of the putative class  
15 and further denies that it violated TILA in any way or at all.

16  
17          99. Answering Paragraph 99 of the CSAC, Defendant denies that Plaintiffs or any  
18 member(s) of a putative class have any valid claim against Defendant, for relief or damages of any  
19 kind, individual, class or otherwise.

20  
21                                   **SECOND CAUSE OF ACTION**

22  
23          100.        Answering Plaintiffs' *second* Paragraph 90 on page 24 of the CSAC,<sup>1</sup>  
24 Defendant re-alleges and reasserts its foregoing responses to Paragraphs 1 through 99.

25  
26  
27                                   

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<sup>1</sup> Plaintiffs' CSAC goes from paragraph 99 to paragraph 90 and then again through paragraph 99. Defendant will refer  
28 to the second set of numbered paragraphs as such.

1           101.       Answering Plaintiffs' second Paragraph 91 on page 24 of the CSAC,  
2 Defendant alleges that TILA and its implementing regulations speak for themselves, and alleges that  
3 Plaintiffs interpret them incorrectly. Defendant denies any remaining implied substantive factual  
4 allegations of Plaintiffs' second Paragraph 91 of the CSAC.

5  
6           102.       Answering Plaintiffs' second Paragraph 92 on page 24 of the CSAC,  
7 Defendant denies the allegations and further denies that it made any misrepresentation or  
8 incomplete representation to Plaintiffs or any member of the putative class.

9  
10          103.       Answering Plaintiffs' second Paragraph 93 on page 24 of the CSAC,  
11 Defendant alleges that the various sets of contract documents provided to each Plaintiff and/or the  
12 members of the putative class each speak for themselves, and Defendant denies the remaining  
13 allegations of Plaintiffs' second Paragraph 93 of the CSAC.

14  
15          104.       Answering Plaintiffs' second Paragraph 94 on page 25 of the CSAC,  
16 Defendant alleges that the various sets of contract documents provided to each Plaintiff and/or the  
17 members of the putative class each speak for themselves, and Defendant denies the remaining  
18 allegations of Plaintiffs' second Paragraph 94 of the CSAC and further denies that it made any false  
19 statement, or failed to disclose any information, to Plaintiffs and/or any member of the putative  
20 class.

21  
22          105.       Answering Plaintiffs' second Paragraph 95 on page 25 of the CSAC,  
23 Defendant denies the allegations and further denies that it made any false statement, or failed to  
24 disclose any information, to Plaintiffs and/or any member of the putative class.

25  
26          106.       Answering Plaintiffs' second Paragraph 96 on page 25 of the CSAC,  
27 Defendant alleges that the various sets of contract documents, including the TILDS, provided to  
28 each Plaintiff and/or the members of the putative class each speak for themselves, and Defendant

1 denies the remaining allegations of Plaintiffs' second Paragraph 96 of the CSAC and further denies  
2 that it failed to disclose any information to Plaintiffs and/or any member of the putative class.

3  
4 107. Answering Plaintiffs' second Paragraph 97 on page 25 of the CSAC,  
5 Defendant alleges that the various sets of contract documents, including the TILDS, provided to  
6 each Plaintiff and/or the members of the putative class each speak for themselves, and Defendant  
7 denies the remaining allegations of Plaintiffs' second Paragraph 97 of the CSAC and further denies  
8 that it made any false statement, or failed to disclose any information, to Plaintiffs and/or any  
9 member of the putative class.

10  
11 108. Answering Plaintiffs' second Paragraph 98 on pages 25 and 26 of the CSAC,  
12 Defendant alleges that the various sets of contract documents, including the TILDS, provided to  
13 each Plaintiff and/or the members of the putative class each speak for themselves, and Defendant  
14 denies the remaining allegations of Plaintiffs' second Paragraph 98 of the CSAC and further denies  
15 that it made any false statement, or failed to disclose any information, to Plaintiffs and/or any  
16 member of the putative class.

17  
18 109. Answering Plaintiffs' second Paragraph 99 on page 26 of the CSAC,  
19 Defendant alleges that the various sets of contract documents, including the TILDS, provided to  
20 each Plaintiff and/or the members of the putative class each speak for themselves, and Defendant  
21 denies the remaining allegations of Plaintiffs' second Paragraph 99 of the CSAC and further denies  
22 that it made any false statement, or failed to disclose any information, to Plaintiffs and/or any  
23 member of the putative class.

24  
25 110. Answering Paragraph 100 of the CSAC, Defendant alleges that the various  
26 sets of contract documents, including the TILDS, provided to each Plaintiff and/or the members of  
27 the putative class each speak for themselves, and Defendant denies the remaining allegations of  
28



1 Paragraph 100 of the CSAC and further denies that it made any false statement, or failed to disclose  
2 any information, to Plaintiffs and/or any member of the putative class.

3  
4 111. Answering Paragraph 101 of the CSAC, Defendant alleges that the various  
5 sets of contract documents, including the TILDS, provided to each Plaintiff and/or the members of  
6 the putative class each speak for themselves, and Defendant denies the remaining allegations of  
7 Paragraph 101 of the CSAC and further denies that it made any false statement, or failed to disclose  
8 any information, to Plaintiffs and/or any member of the putative class.

9  
10 112. Answering Paragraph 102 of the CSAC, Defendant denies all the allegations,  
11 denies that it made any false statement, or failed to disclose any information, to Plaintiffs and/or any  
12 member of the putative class and further denies that Plaintiffs and/or any member of the putative  
13 class have been injured in any way or at all.

14  
15 113. Answering Paragraph 103 of the CSAC, Defendant denies all the allegations,  
16 denies that it made any false statement, or failed to disclose any information, to Plaintiffs and/or any  
17 member of the putative class and further denies that Plaintiffs and/or any member of the putative  
18 class have been injured in any way or at all, or that Plaintiffs and/or any member of the putative  
19 class are entitled to punitive damages.

20  
21 114. Answering Paragraph 104 of the CSAC, Defendant denies that Plaintiffs or  
22 any member(s) of a putative class have any valid claim against Defendant, for relief or damages of  
23 any kind, individual, class or otherwise.

**THIRD CAUSE OF ACTION**

115. Answering Paragraph 105 of the CSAC, Defendant re-alleges and reasserts its foregoing responses to Paragraphs 1 through 104 and the second set of Paragraphs numbered 90 – 99.

116. Answering Paragraph 106 of the CSAC, Defendant admits that Plaintiffs purport to bring this case as alleged, but denies the conclusions, assertions and allegations set forth in Paragraph 106 of the CSAC and further denies the existence of any class.

117. Answering Paragraph 107 of the CSAC, Defendant admits that Plaintiffs purport to bring this case as alleged, but denies the conclusions and allegations stated in Paragraph 107 of the CSAC, denies the existence of any class and further denies that Defendant should be obligated to Plaintiffs and/or any member of the purported class for any type of relief.

118. Answering Paragraph 108 of the CSAC, Defendant admits that Plaintiffs purport to bring this case as alleged, but denies the conclusions assertions and implied allegations stated in Paragraph 108 of the CSAC, denies the existence of any class and further denies that Defendant has failed to disclose any information to Plaintiffs and/or any member of the purported class.

119. Answering Paragraph 109 of the CSAC, Defendant alleges that the various sets of contract documents provided to each Plaintiff and/or the members of the putative class each speak for themselves, and Defendant thus denies the allegations of Paragraph 109 of the CSAC and further denies that it made any false statement, or failed to disclose any information, to Plaintiffs and/or any member of the putative class.

1           120.       Answering Paragraph 110 of the CSAC, Defendant alleges that the various  
2 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
3 speak for themselves, and Defendant thus denies the allegations of Paragraph 110 of the CSAC and  
4 further denies that it made any false statement, or failed to disclose any information, to Plaintiffs  
5 and/or any member of the putative class.

6  
7           121.       Answering Paragraph 112<sup>2</sup> of the CSAC, Defendant alleges that the various  
8 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
9 speak for themselves, and Defendant thus denies the allegations of Paragraph 112 of the CSAC and  
10 further denies that it failed to disclose any information to Plaintiffs and/or any member of the  
11 putative class.

12  
13           122.       Answering Paragraph 113 of the CSAC, Defendant alleges that the various  
14 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
15 speak for themselves, and Defendant thus denies the allegations of Paragraph 113 of the CSAC and  
16 further denies that it made any false statement, or failed to disclose any information, to Plaintiffs  
17 and/or any member of the putative class.

18  
19           123.       Answering Paragraph 114 of the CSAC, Defendant alleges that the various  
20 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
21 speak for themselves, and Defendant thus denies the allegations of Paragraph 114 of the CSAC and  
22 further denies that it made any false statement, or failed to disclose any information, to Plaintiffs  
23 and/or any member of the putative class.

24  
25  
26  
27       

---

  
28       <sup>2</sup> There is no Paragraph 111 in the CSAC.

1           124.       Answering Paragraph 115 of the CSAC, Defendant alleges that the various  
2 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
3 speak for themselves, and Defendant denies the allegations of Paragraph 115 of the CSAC.

4  
5           125.       Answering Paragraph 116 of the CSAC, Defendant denies the allegations.

6  
7           126.       Answering Paragraph 117 of the CSAC, Defendant alleges that the various  
8 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
9 speak for themselves, and Defendant thus denies the allegations of Paragraph 117 of the CSAC and  
10 further denies that it made any false statement, or failed to disclose any information, to Plaintiffs  
11 and/or any member of the putative class.

12  
13           127.       Answering Paragraph 118 of the CSAC, Defendant alleges that the various  
14 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
15 speak for themselves, and Defendant thus denies the allegations of Paragraph 118 of the CSAC and  
16 further denies that it made any false statement, or failed to disclose any information, to Plaintiffs  
17 and/or any member of the putative class.

18  
19           128.       Answering Paragraph 119 of the CSAC, Defendant denies the allegations and  
20 further denies that it engaged in the conduct alleged.

21  
22           129.       Answering Paragraph 120 of the CSAC, Defendant denies the allegations and  
23 further denies that it engaged in the conduct alleged.

24  
25           130.       Answering Paragraph 121 of the CSAC, Defendant denies the allegations,  
26 denies that it failed to disclose any information, to Plaintiffs and/or any member of the putative class  
27 and further denies that any of Plaintiffs or any member of the putative class was or was likely to be  
28 deceived by any conduct of Defendant.

1           131.       Answering Paragraph 122 of the CSAC, Defendant denies the allegations and  
2 further denies that it engaged in any misconduct.

3  
4           132.       Answering Paragraph 123 of the CSAC, Defendant alleges that the various  
5 sets of contract documents provided to each Plaintiff and/or the members of the putative class each  
6 speak for themselves with respect to monies paid to Defendant under the terms of such loan  
7 agreements, and Defendant denies the remaining allegations of Paragraph 123 of the CSAC and  
8 further denies that the implied allegation that Defendant engaged in any type of misconduct.

9  
10          133.       Answering Paragraph 124 of the CSAC, Defendant denies that Plaintiffs are  
11 entitled to any relief. Defendant denies all remaining allegations of Paragraph 124 of the CSAC.

12  
13          134.       Answering Paragraph 125 of the CSAC, Defendant denies that Plaintiffs or  
14 any member(s) of a putative class are entitled to or have any valid claim against Defendant for relief  
15 or damages of any kind, individual, class or otherwise, denies that Plaintiffs and/or any member of a  
16 putative class has sustained any kind of harm or injury and further denies that Defendant engaged in  
17 any kind of unlawful or improper activity.

18  
19          135.       Answering Paragraph 126 of the CSAC, Defendant denies that Plaintiffs or  
20 any member(s) of a putative class are entitled to or have any valid claim against Defendant for relief  
21 or damages of any kind, individual, class or otherwise, denies that Plaintiffs and/or any member of a  
22 putative class has sustained or is threatened with any kind of harm or injury and further denies that  
23 Defendant engaged in any kind of improper activity.

24  
25          136.       Answering Paragraph 127 of the CSAC, Defendant denies that Plaintiffs or  
26 any member(s) of a putative class are entitled to or have any valid claim against Defendant, for  
27 relief or damages of any kind, individual, class or otherwise, denies that Plaintiffs and/or any  
28

1 member of a putative class has sustained any kind of harm or injury and further denies that  
2 Defendant engaged in any kind of unlawful or improper activity.

3  
4 137. Answering Paragraph 128 of the CSAC, Defendant denies that Plaintiffs or  
5 any member(s) of a putative class are entitled to or have any valid claim against Defendant, for  
6 relief or damages of any kind, individual, class or otherwise, and further denies that Defendant  
7 engaged in any kind of unlawful or improper activity.

8  
9 **FOURTH CAUSE OF ACTION**

10  
11 138. Answering Paragraph 129 of the CSAC, Defendant re-alleges and reasserts its  
12 foregoing responses to Paragraphs 1 through 110 and 112 through 128 and the second set of  
13 Paragraphs numbered 90 – 99.

14  
15 139. Answering Paragraph 130 of the CSAC, Defendant admits that home loans  
16 made by Defendant are governed in part by promissory notes, the original form of which is created  
17 by Defendant, alleges that the various sets of loan documents provided to each Plaintiff and/or the  
18 members of the putative class each speak for themselves, and denies all remaining allegations of  
19 Paragraph 130 of the CSAC.

20  
21 140. Answering Paragraph 131 of the CSAC, Defendant alleges that the various  
22 promissory notes provided to each Plaintiff and/or the members of the putative class each speak for  
23 themselves, and denies all remaining allegations of Paragraph 131 of the CSAC.

24  
25 141. Answering Paragraph 132 of the CSAC, Defendant alleges that the various  
26 promissory notes provided to each Plaintiff and/or the members of the putative class each speak for  
27 themselves, admits that Defendant has issued forms of promissory notes on adjustable rate  
28 mortgages with variable payment option features that contain the phrase “I will pay Principal and



1 Interest by making payments every month,” and denies all remaining implied conclusions or  
2 allegations of Paragraph 132 of the CSAC.

3  
4 142. Answering Paragraph 133 of the CSAC, Defendant alleges that the various  
5 sets of loan documents provided to each Plaintiff and/or the members of the putative class each  
6 speak for themselves, admits that Defendant issues TILDS relating to adjustable rate mortgages  
7 with variable payment option features that contain payment schedules and denies all remaining  
8 implied conclusions or allegations of Paragraph 133 of the CSAC.

9  
10 143. Answering Paragraph 134 of the CSAC, Defendant alleges that the various  
11 sets of loan documents provided to each Plaintiff and/or the members of the putative class each  
12 speak for themselves, denies the implied conclusions or allegations and Paragraph 134 of the CSAC  
13 and further denies that any of the sets of loan documents provided to Plaintiff and/or the members of  
14 the putative class are or were uncertain or ambiguous.

15  
16 144. Answering Paragraph 135 of the CSAC, Defendant admits that home loans  
17 made by Defendant are governed in part by promissory notes, the original form of which is created  
18 by Defendant, alleges that the various sets of loan documents provided to each Plaintiff and/or the  
19 members of the putative class each speak for themselves, and denies all remaining allegations of  
20 Paragraph 135 of the CSAC.

21  
22 145. Answering Paragraph 136 of the CSAC, Defendant alleges that the various  
23 sets of loan documents provided to each Plaintiff and/or the members of the putative class each  
24 speak for themselves, denies the allegations of Paragraph 136 of the CSAC and further denies  
25 breaching agreement with any Plaintiff and/or the member of the putative class.

26  
27 146. Answering Paragraph 137 of the CSAC, Defendant alleges that the various  
28 sets of loan documents provided to each Plaintiff and/or the members of the putative class each

1 speak for themselves, denies the allegations of Paragraph 137 of the CSAC and further denies  
2 engaging in any improper or unauthorized conduct towards any of the Plaintiffs and/or members of  
3 the putative class.

4  
5 147. Answering Paragraph 138 of the CSAC, Defendant alleges that the various  
6 sets of loan documents provided to each Plaintiff and/or the members of the putative class each  
7 speak for themselves, denies the allegations of Paragraph 136 of the CSAC and further denies  
8 breaching agreement with any Plaintiff and/or the member of the putative class.

9  
10 148. Answering Paragraph 139 of the CSAC, Defendant denies the allegations  
11 made with respect to the Plaintiffs and alleged members of the putative class collectively.

12  
13 149. Answering Paragraph 140 of the CSAC, Defendant alleges that the various  
14 sets of loan documents provided to each Plaintiff and/or the members of the putative class each  
15 speak for themselves, denies the allegations of Paragraph 140 of the CSAC, denies breaching  
16 agreement with any Plaintiff and/or the member of the putative class and further denies that  
17 Plaintiffs and/or any member of a putative class has sustained or will sustain any kind of harm or  
18 injury as the result of any conduct of Defendant as alleged.

19  
20 150. Answering Paragraph 141 of the CSAC, Defendant alleges that the various  
21 promissory notes provided to each Plaintiff and/or the members of the putative class each speak for  
22 themselves, and denies all allegations of Paragraph 141 of the CSAC.

23  
24 151. Answering Paragraph 142 of the CSAC, Defendant denies the allegations,  
25 denies that any of Plaintiffs and/or any member of a putative class has any valid claim against  
26 Defendant and further denies that Plaintiffs and/or any member of a putative class has sustained or  
27 will sustain any kind of harm or injury as the result of any conduct of Defendant.

**FIFTH CAUSE OF ACTION**

152. Answering Paragraph 143 of the CSAC, Defendant re-alleges and reasserts its foregoing responses to Paragraphs 1 through 110 and 112 through 142 and the second set of Paragraphs numbered 90 – 99.

153. Answering Paragraph 144 of the CSAC, Defendant admits that home loans made by Defendant are governed in part by various writings, alleges that the various sets of loan documents provided to each Plaintiff and/or the members of the putative class each speak for themselves, and denies the remaining allegations of Paragraph 144 of the CSAC.

154. Answering Paragraph 145 of the CSAC, Defendant admits that home loans made by Defendant are governed in part by various writings, alleges that the various sets of loan documents provided to each Plaintiff and/or the members of the putative class each speak for themselves, and denies the remaining allegations of Paragraph 145 of the CSAC.

155. Answering Paragraph 146 of the CSAC, Defendant alleges that the various sets of loan documents provided to each Plaintiff and/or the members of the putative class each speak for themselves, and denies the allegations of Paragraph 146 of the CSAC.

156. Answering Paragraph 147 of the CSAC, Defendant alleges that the various sets of loan documents provided to each Plaintiff and/or the members of the putative class each speak for themselves, and denies the allegations of Paragraph 147 of the CSAC.

157. Answering Paragraph 148 of the CSAC, Defendant alleges that the various sets of loan documents provided to each Plaintiff and/or the members of the putative class each speak for themselves, and denies the allegations.

1           158.       Answering Paragraph 149 of the CSAC, Defendant alleges that the various  
2 sets of loan documents provided to each Plaintiff and/or the members of the putative class each  
3 speak for themselves, and denies the allegations of Paragraph 149 of the CSAC, denies any  
4 “interference” with the rights or obligations of Plaintiffs and/or the members of the putative class  
5 and further denies that any of Plaintiffs and/or any member of the putative class has sustained or  
6 will sustain any kind of harm or injury as the result of any conduct of Defendant.  
7

8           159.       Answering Paragraph 150 of the CSAC, Defendant denies the allegation made  
9 with respect to the Plaintiffs and alleged members of the putative class collectively.  
10

11           160.       Answering Paragraph 151 of the CSAC, Defendant alleges that the various  
12 sets of loan documents provided to each Plaintiff and/or the members of the putative class each  
13 speak for themselves, and denies the allegations of Paragraph 151 of the CSAC, denies any  
14 “interference” with the rights or obligations of Plaintiffs and/or the members of the putative class,  
15 denies that it failed to disclose any information to Plaintiffs and/or the members of the putative class  
16 and further denies that any of Plaintiffs and/or any member of the putative class has sustained or  
17 will sustain any kind of harm or injury as the result of any conduct of Defendant.  
18

19           161.       Answering Paragraph 152 of the CSAC, Defendant denies the allegations,  
20 denies breaching any part of any agreement with any of the Plaintiffs and/or the members of the  
21 putative class, denies engaging in improper acts and further denies that it misled or failed to disclose  
22 any information to Plaintiffs and/or the members of the putative class.  
23

24           162.       Answering Paragraph 153 of the CSAC, Defendant denies the allegations and  
25 further denies breaching any part of any agreement with any of the Plaintiffs and/or the members of  
26 the putative class.  
27  
28

1           163.       Answering Paragraph 154 of the CSAC, Defendant admits that it has sold  
2 adjustable rate mortgages with a payment option feature in various parts of the United States,  
3 including California, and that it possesses knowledge and information about such loans, but denies  
4 all remaining allegations of Paragraph 154 of the CSAC.

5  
6           164.       Answering Paragraph 155 of the CSAC, Defendant denies the allegations and  
7 denies that it acted improperly in any fashion.

8  
9           165.       Answering Paragraph 156 of the CSAC, Defendant denies the allegations and  
10 denies that it acted improperly in any fashion.

11  
12           166.       Answering Paragraph 157 of the CSAC, Defendant denies the allegations,  
13 denies that any of Plaintiffs and/or any member of a putative class has any valid claim against  
14 Defendant, denies that it acted improperly in any fashion and further denies that Plaintiffs and/or  
15 any member of a putative class has sustained or will sustain any kind of harm or injury as the result  
16 of any conduct of Defendant.

17  
18           167.       Answering Paragraph 158 of the CSAC, Defendant denies the allegations,  
19 denies that any of Plaintiffs and/or any member of a putative class has any valid claim against  
20 Defendant, denies that it acted improperly in any fashion and further denies that Plaintiffs and/or  
21 any member of a putative class has sustained or will sustain any kind of harm or injury as the result  
22 of any conduct of Defendant.

23  
24                           **DEFENSES**

25  
26           Defendant, while reserving the right to assert other affirmative defenses as discovery  
27 proceeds, without assuming the burden of proof when the burden of proof rests on Plaintiffs and  
28 without conceding (where applicable) the existence of a proper class, asserts the following separate

1 and independent defenses, jointly and severally as to each Plaintiff and alleged member of the  
2 putative class, in further opposition to the CSAC:

3  
4 **First Defense**

5 **(Failure to State a Claim)**

6  
7 168. Plaintiffs' Complaint fails to state any claim(s) upon which relief may be  
8 granted as against Defendant.

9  
10 **Second Defense**

11 **(Standing)**

12  
13 169. Plaintiffs lack standing to bring the claims alleged.

14  
15 **Third Defense**

16 **(Lack of Ripeness)**

17  
18 170. Defendant alleges that some or all of Plaintiffs' claims are not ripe for  
19 adjudication.

20  
21 **Fourth Defense**

22 **(Misjoinder)**

23  
24 171. Defendant alleges that Plaintiffs' claims, as well as Plaintiffs themselves  
25 including, but not limited to, the putative class members, have been misjoined. This action should  
26 be severed due to misjoinder of both claims and parties. The misjoinder of the Plaintiffs' claims and  
27 the Plaintiffs themselves is so severe and inappropriate that it rises to a level which will deny  
28



1 Defendant certain state and constitutional protections, including the right to due process and a fair  
2 trial.

3  
4 **Fifth Defense**

5 **(Abstention)**

6  
7 172. Defendant alleges that the Court should abstain from addressing any claim  
8 under California Business and Professions Code Section 17200 in favor of paramount administrative  
9 or regulatory authority and to avoid improperly substituting Court supervision for that of the  
10 appropriate regulatory agency or governmental entity.

11  
12 **Sixth Defense**

13 **(Lack of Prerequisite Elements for Class Certification)**

14  
15 173. Defendant alleges that Plaintiffs' putative claims for class certification fail  
16 because they lack the prerequisite elements for certification of a class.

17  
18 **Seventh Defense**

19 **(Inadequate Putative Class Representatives)**

20  
21 174. Defendant alleges that this action is not brought by competent Plaintiffs for  
22 the benefit of injured parties. *See Kraus v. Trinity Mgmt. Serv.s, Inc.*, 23 Cal. 4th 116, 138 (2000);  
23 *Rosenbluth Int'l, Inc. v. Sup. Ct.*, 101 Cal. App. 4th 1073, 1079 (2002).  
24

25  
26 **Eighth Defense**

27 **(Putative National Class Claims Unconstitutional)**

### Ninth Defense

## Tenth Defense

### Eleventh Defense

**Twelfth Defense****(TILA: No Alleged Disclosure Error Apparent on Face of Disclosure Documents)**

179. Plaintiffs are not entitled to rescind their mortgage loan under TILA, or to obtain any statutory damages for failure to rescind, because no alleged disclosure error is apparent on the face of the disclosure documents.

**Thirteenth Defense****(TILA: Statute of Limitations)**

180. Plaintiffs are not entitled to rescind their mortgage loan under TILA, or to obtain any statutory damages for failure to rescind, because some or all Plaintiffs obtained their loan more than one year before filing suit and therefore are barred by TILA's one-year statute of limitations.

**Fourteenth Defense****(TILA: Good Faith Conformity)**

181. Defendant acted in good faith conformity with the rules, regulations and interpretations by the Federal Reserve Board.

**Fifteenth Defense****(TILA: Bona Fide Error)**

182. Plaintiffs' claims are barred or limited because the conduct complained of, if it occurred, resulted from a bona fide error. If any disclosure error is determined to exist as to a Plaintiff, such error was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

**Sixteenth Defense**

**(TILA: No Private Right of Action)**

183. Some or all of Plaintiffs' claims are precluded because TILA does not provide for a private right of action under the facts alleged.

**Seventeenth Defense**

**(TILA: No Right to Rescind)**

184. Plaintiffs are not entitled to, and do not have the right to, rescind the loan transactions described.

**Eighteenth Defense**

**(Plaintiffs Given All Material Disclosures)**

185. Plaintiffs were given all material disclosures in connection with the loan transaction.

**Nineteenth Defense**

**(No Duty to Disclose)**

186. Plaintiffs' claims are barred because Defendant did not have a duty to disclose to Plaintiffs the facts allegedly concealed.

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**Twentieth Defense****(Preemption – Barred by Federal Law)**

187. Some or all of Plaintiffs' state law-based claims are barred and/or preempted by applicable federal law or regulations, including, but not limited to, TILA, 15 U.S.C. § 1601 *et seq.*, and applicable regulations there under, including Regulation Z, 12 C.F.R. § 226 *et seq.*, and Home Owners' Loan Act of 1993, 48 Stat. 129, as amended, 12 U.S.C. § 1461 *et seq.* ("HOLA").

**Twenty-first Defense****(Lack of Manageability)**

188. Defendant alleges that the representative action that Plaintiffs allege under California Business and Professions Code Section 17200 is unmanageable, *see Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 657-58 (1993), and that the procedural rules of California Business and Professions Code Section 17200 may not be used to alter the substantive rights of Defendant without unfairly and impermissibly impacting the rights of Defendant and violating due process. *See Granberry v. Islay Inv.*, 9 Cal. 4th 738, 749 (1995).

**Twenty-second Defense****(Plaintiffs Cannot Sue As 'Private Attorney General')**

189. Plaintiffs cannot obtain relief as a "private attorney general."

**Twenty-third Defense****(Business Practices Not Unlawful)**

190. Plaintiffs are barred from relief under California Business & Professions Code Section 17200 *et seq.* because Defendant's business practices are not unlawful. Defendant complied with all applicable statutes and regulations.

**Twenty-fourth Defense****(Business Practices Not Unfair)**

191. Plaintiffs are barred from relief under Business & Professions Code Section 17200 *et seq.* because Defendant's business practices are not unfair. The utility of Defendant's practices outweigh any potential harm and/or the practices do not threaten an incipient violation of consumer law or violate the policy or spirit of one of those laws in that its effects are comparable to or the same as a violation of the law.

**Twenty-fifth Defense****(Business Practices Not Deceptive or Fraudulent)**

192. Plaintiffs are barred from relief under Business & Professions Code Section 17200 *et seq.* because Defendant's business practices are not deceptive nor are they fraudulent. The practices are not likely to deceive, nor was there actual reliance by any Plaintiff as required for purposes of standing.



**Twenty-sixth Defense****(Inconsistent State Laws)**

193. As a defense to each cause of action in the Complaint and to the putative national class action claims alleged therein, Defendant alleges that the contracts and agreements and provisions contained therein as described in the Complaint were lawful and permissible in one or more jurisdictions in the United States and accordingly did not and cannot form the basis of a violation of California Business and Professions Code Section 17200.

**Twenty-seventh Defense****(Right to Rescind Expired)**

194. Plaintiffs, at the time of closing, were provided a three business day notice of right to cancel as required under the law, and this rescission period expired three business days later.

**Twenty-eighth Defense****(Statute of Frauds)**

195. Plaintiffs' claims are barred by the statute of frauds.

**Twenty-ninth Defense****(Parol Evidence)**

196. Defendant alleges that some or all of Plaintiffs' claims in the Complaint are barred by the parol evidence rule.

**Thirtieth Defense**

**(Barred by Contract)**

197. Defendant alleges that some or all of Plaintiffs' claims are barred by the applicable provisions of the contracts, policies and/or agreements at issue.

**Thirty-first Defense**

**(Accord and Satisfaction)**

198. Defendant alleges that some or all of Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

**Thirty-second Defense**

**(Justification)**

199. The acts and omissions of Defendant, if any, were justified by the information and facts available to Defendant at the time such acts and omissions, if any, occurred.

**Thirty-third Defense**

**(Privilege)**

200. The acts and statements of Defendant were good faith assertions of Defendant's rights and are privileged. Defendant was privileged and justified in acting as Defendant did and in making the statements and representations made by both statute and common law. Accordingly, Defendant cannot be liable for Plaintiffs' damages, if there are any.

**Thirty-fourth Defense****(Consent)**

201. Plaintiffs, themselves and/or through their agents, had the opportunity and obligation to read all documents presented to or signed by them. The terms of the loans at issue alleged in the CSAC were fully disclosed to Plaintiffs, and Plaintiffs knowingly entered into the transactions, having either understood such transactions or having failed to avail themselves of the opportunity to understand the transactions. Plaintiffs consented to and approved all the acts and omissions about which Plaintiffs now complain. Accordingly, Plaintiffs are barred from obtaining the relief sought in the CSAC.

**Thirty-fifth Defense****(Waiver)**

202. By conduct, representations and omissions, Plaintiffs have waived, relinquished and/or abandoned, and are equitably estopped to assert, any claim for relief against Defendant respecting the matters that are the subject of the CSAC.

**Thirty-sixth Defense****(Ratification)**

203. Plaintiffs expressly, ostensibly and/or implicitly authorized or ratified the transactions at issue.

**Thirty-seventh Defense****(Plaintiffs' Wrongful Conduct)**

204. Plaintiffs are barred from recovery as a result of their own, and/or their agents', wrongful or negligent conduct and actions or omissions, including for some Plaintiffs failure to perform their payment obligations under the individual contracts at issue, which preclude Plaintiffs' individual and/or putative class claims and/or are the direct and/or proximate cause of all damages alleged in the CSAC.

**Thirty-eighth Defense****(Comparative Fault)**

205. Plaintiffs, themselves and/or through their agents, did not exercise ordinary care, caution and prudence in connection with the transactions and events alleged within the CSAC. Plaintiffs' lack of care, caution and prudence were independent of and unrelated to the actions, if any, of Defendant, and proximately caused some or all of the damages, if any, suffered by Plaintiffs. Plaintiffs are therefore barred entirely from recovery against Defendant, or alternatively, Plaintiffs should have the recovery, if any, proportionately reduced.

**Thirty-ninth Defense****(Assumption of Risk)**

206. Plaintiffs, themselves and/or through their agents, acted with full knowledge and understanding of the relevant facts and circumstances surrounding the transactions and relations at issue in this litigation and assumed any and all risks associated therewith. Plaintiffs are therefore barred from obtaining the relief sought in the CSAC.

**Fortieth Defense****(Choice)**

207. Defendant alleges that Plaintiffs were provided with a meaningful choice whether to enter into the transactions referenced in the Complaint and, therefore, the matters alleged were not unconscionable or unfair.

**Forty-first Defense****(Unjustifiable Reliance)**

208. Plaintiffs, themselves and/or through their agents, failed to investigate facts that were reasonably available to them and thereby unjustifiably relied on Defendant's purported misrepresentations or nondisclosures of material facts, if there were any. Plaintiffs are therefore barred from obtaining relief sought in the CSAC.

**Forty-second Defense****(Reasonably Available Alternative Source)**

209. Defendant alleges that Plaintiffs had available to them in the marketplace reasonably available alternative sources of financing, credit, real estate loans and insurance, and voluntarily elected to enter into agreements, discussions and contracts, such that the business practices alleged in the Complaint were neither unconscionable nor unfair.

**Forty-third Defense****(Acts of Others)**

210. Defendant alleges that any purported damages sought by Plaintiffs were legally caused, in whole or in part, by the intentional conduct, willful misconduct, fault and/or negligence of persons or entities other than Defendant, including, without limitation, Plaintiffs and/or their agents.

**Forty-fourth Defense****(Unclean Hands)**

211. As a result of the acts and omissions in the matters relevant to this CSAC, Plaintiffs have unclean hands and are therefore barred from asserting any claims against Defendant.

**Forty-fifth Defense****(Estoppel, Laches, Waiver)**

212. Plaintiffs' claims are barred in whole or in part under the doctrines of estoppel, laches and/or waiver.

**Forty-sixth Defense****(Failure to Mitigate)**

213. Plaintiffs have failed to mitigate or attempted to mitigate damages, if in fact any damages have been or will be sustained, and any recovery by Plaintiffs must be diminished or barred by reason thereof.



**Forty-seventh Defense****(Principles of Equity - Rescission)**

214. Defendant states that in the event the Court were to order rescission, principles of equity mandate that all liens remain in place until the repayment and return of all principal.

**Forty-eighth Defense****(Principles of Equity – Rescission – Recoupment and Setoff)**

215. Defendant states that in the event the Court were to order rescission or any damages, principles of equity mandate that the Court also allow Defendant recoupment and setoff.

**Forty-ninth Defense****(Due Process – Rescission)**

216. The application and attempted supervision of the remedy of rescission on a class-wide basis would be so vague, imprecise and inconsistent as to violate Defendant's rights to due process under of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the California Constitution.

**Fiftieth Defense****(Excessive Fines and Equal Protection – Rescission)**

217. The application and attempted supervision of the remedy of rescission on a class-wide basis would result in damages and losses so severe and excessive in proportion to harm alleged as to violate Defendant's rights under the United States Constitution and the California Constitution.

**Fifty-first Defense****(Requirements for Restitution)**

218. Defendant alleges that the claim for disgorgement under California Business and Professions Code Section 17200 requires that restitution be limited: (1) to consumers who relied on alleged improper statements and materials; and (2) by Defendant's ability to pay restitution, and that, accordingly, Plaintiffs have failed to allege an adequate claim for restitution.

**Fifty-second Defense****(Impermissible Damage Claim)**

219. Defendant alleges that the remedies Plaintiffs seek are in reality impermissible damages and therefore not recoverable as alleged.

**Fifty-third Defense****(Inappropriate Exercise of Judicial Authority)**

220. Defendant alleges that Plaintiffs seek injunctive relief which would be an inappropriate exercise of judicial authority as an unlawful or improper exercise of general regulatory powers by the Court over the business practices, contracts and agreements at issue, and/or which represent the deprivation of a property interest without a fair hearing.

**Fifty-fourth Defense**

**(Mootness)**

221. Defendant alleges that Plaintiffs' claims are moot because, to the extent, if any, the conduct complained of occurred, it has ceased and, therefore, injunctive relief is inappropriate.

**Fifty-fifth Defense**

**(Offset)**

222. Defendant alleges that it is entitled to an offset against any amounts allegedly owing to Plaintiffs by amounts Plaintiffs owe to Defendant.

**Fifty-sixth Defense**

**(Commerce Clause)**

223. Defendant alleges that any award of punitive damages against it in this matter based on Defendant's lawful conduct outside of California would impose unreasonable state limitations on interstate commerce in violation of the Commerce Clause of the United States Constitution.

**Fifty-seventh Defense****(Equal Protection)**

224. The provisions of California law limiting the amount of punitive damages which may be awarded in specified cases, while permitting unlimited punitive damages for other tortious conduct, unlawfully discriminates against defendants who are subject to unlimited punitive damage awards in favor of defendants not subject to unlimited punitive damage awards. Such discrimination violates Defendant's right to equal protection under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 7, and Article IV, Sections 2 and 16 of the California Constitution.

**Fifty-eighth Affirmative Defense****(Due Process and Unconstitutionality – Punitive Damages)**

225. The application of California law permitting an award of punitive damages in this action is vague, imprecise and inconsistent and violates Defendant's rights to due process under of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the California Constitution. Defendant specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damages award which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Automobile Ins. Co. v. Campbell*, 123 S.Ct. 1513 (2003). Further punitive damages are a punishment, a quasi-criminal sanction for which Defendant has not been afforded the specific procedural safeguards prescribed in the Fifth and Sixth Amendments to the United States Constitution.

**Fifty-ninth Defense**

**(Public Policy)**

226. Defendant alleges that some or all of Plaintiffs' claims are barred by the public policies of the United States and/or the State of California.

**Sixtieth Defense**

**(Insufficient Particularity)**

227. Defendant alleges that Plaintiffs have failed to plead their claims with sufficient particularity to meet required standards to permit Defendant to raise all appropriate affirmative defenses and, therefore, Defendant reserves its right to amend or supplement this answer with additional defenses.

**Other Affirmative Defenses**

228. Defendant reserves the right to add other affirmative defenses as they become known, based on facts developed during discovery in this action.

WHEREFORE, Defendant prays that:

1. Plaintiffs take nothing by way of their Complaint;
2. The Court enter judgment in Defendant's favor;

3. Defendant be awarded all of its costs of defense, including any recoverable attorneys' fees; and

4. The Court issue or award all other relief that the Court deems just and appropriate.

DATED: May 9, 2008.

REED SMITH LLP

By



Jack R. Nelson (SBN 111863)

Attorneys for Defendant Wachovia Mortgage, FSB

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